***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.No. 24754 of 2005

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% 24.01.2006

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Between:

K. Karunakar, S/o. K. Ramanaiah,
E.No. 251865, R/o. Plot No. 66, Road No. 1,
Mallikarjuna Nagar Colony, Post : Chintakakunta Check Post, L.B. Post, Hyderabad - 500 074.

..... PETITIONER

AND

APSRTC, rep by its Regional Manager, Rangareddy Region, MGBS, Gowliguda, Hyderabad and others.

.....RESPONDENTS

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! Counsel for the Petitioner: Sri V. Narsimha Goud

^ COUNSEL FOR THE RESPONDENTS: Sri V.T.M. Prasad, Standing Counsel

< Gist:

> Head Note:

? CITATIONS:

1. 1976 LAB. I.C. 1396
2. AIR 1997 SC 2349
3. 1993 (1) ALT 164

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JUDGMENT:

This writ petition raises a question of general importance, in the field of adjudication, under the Industrial Disputes Act (for short 'the Act').

The petitioner is employed as a Driver in the A.P.S.R.T.C.
On 15-05-1997, he was entrusted with the duty of driving a Bus,
on the route from Hyderabad to Amarachinta. At 11:15 p.m.,
on that day, an accident took place, involving the Bus, driven by the petitioner, and a bullock cart; resulting the death of one person and a bullock. Disciplinary proceedings were initiated against the petitioner, by the Corporation. Simultaneously, the petitioner was tried for an offence under Section 304-A of I.P.C.

In the departmental enquiry, petitioner was found guilty of misconduct. The 3rd

respondent passed an order dated 27-10-1997, removing the petitioner from service. Aggrieved thereby, the petitioner preferred an appeal before the 2nd respondent. On 12-12-1997, the 2nd respondent allowed the appeal, in part; set aside the order of removal, and directed re-appointment of the petitioner, as a fresh candidate. Review filed by the petitioner before the 1st respondent was rejected.

Petitioner raised an industrial dispute under Section 2-A(2) of the Act, before the Labour Court-I, Hyderabad, and it was numbered as I.D.No.149 of 2002. Respondents contested the matter. The Labour Court passed an award, dated 24-03-2005, taking the view that, it is not open to the petitioner, to raise an industrial dispute, under Section 2-A(2) of the Act, once he was reinstated into service, and in that view of the matter, the I.D. is not maintainable. The petitioner challenges the same.

Sri V.Narsimha Goud, learned counsel for the petitioner submits that the petitioner has been removed from service, and Section 2-A (2) of the Act, takes in its fold, all disputes, that arise out of such action. He contends that the fact that the petitioner was taken into service, as a fresh candidate, denying him the benefit of the past service, etc., are relatable to such removal, and thereby, fall within the scope of that provision. Learned counsel submits that having regard to the object underlying the Act, in general, and Section 2-A(2) of the Act, in particular, the Labour Court was not justified in rejecting the I.D. He places reliance upon the judgment of the Orissa High Court reported in ***Joseph N.K. Pradhan v. Industrial Tribunal*** .

Sri V.T.M. Prasad, learned Standing Counsel for the respondents, on the other hand, submits that Section 2-A(2) can be pressed into service, only when an employee is suffering the consequences, of dismissal, removal, or discharge from service, and it does not apply to cases, where an employee has been reinstated, after removal. It is urged that the reinstatement of the petitioner, as a consequence of the orders passed by the appellate authority, the whole procedure partakes a different character, and that no exception can be taken to the award passed by the Labour Court.

The facts, that gave rise to the filing of this writ petition, have already been narrated, with permissible brevity. There is no contest between the parties, as to the said facts. The Labour Court refused to adjudicate the industrial dispute, raised by the

petitioner, on the sole ground that it does not fall within the scope and ambit of Section 2-A(2) of the Act.

The preamble of the Act itself makes it clear that it was enacted with a view to make provision for investigation and settlement of industrial disputes, and other related purposes.

A close scrutiny of the various provisions of the Act discloses that the object of the Legislators was to address the various issues, relating to the industry, in general, in contradistinction, to the individuals concerned therewith, as employers or employees. The definition of various terms, such as workman, industry, employer, or incorporation of elaborate provisions for general phenomena, such as strikes, lock-out, lay-off, retrenchment, unfair labour practices; proceed on these lines.

Under the Scheme of the Act, as it stood before 1965, only such industrial disputes, which involve the workmen or industry, in general, could constitute the subject-matter of adjudication by the Courts or Tribunals, established under the Act. The impact of the dismissal, discharge, termination of even an individual employee, on maintenance of industrial peace and tranquility, was felt by the Parliament and after elaborate study of the matter, it was decided that dismissal, termination, removal etc., of a workman shall also be deemed to be an industrial dispute.

Even where the dispute related to an individual workman, it could have been taken to the Labour Court for adjudication, if only it was espoused by a Union, and a reference was made by the Government. The parties to such disputes, used to be the unions of the workmen on the one hand, and the management of the industry, on the other.

It was in this context Section 2-A was inserted through Act 35 of 1965. It reads as under:

> **"Sec.2-A**: **Dismissal, etc., of an individual workman to be deemed to be an industrial dispute**.—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute".

Even after the insertion of this provision, an industrial dispute involving the dismissal etc., of an individual workman, could have reached the Labour Court, only through

the process of reference under Section 10. The A.P. State Legislature, provided further relief to the workman in this regard, and added sub-section (2) to Section 2-A, obviating the necessity of seeking a reference under Section 10, in such matters. The provision reads as under:

> **"Sec.2-A(2)**: Notwithstanding anything in section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute".

The industrial dispute raised by the petitioner under Section 2-A(2) of the Act was rejected on the sole ground that the order of removal, passed against the petitioner ceased to exist, once he came to be reinstated.

It is a matter of record that the petitioner was removed from service. The appellate authority, the 2nd respondent, had set aside the order of removal, but directed that the petitioner be appointed, afresh. Thereby, though the petitioner was reinstated, he was denied the benefit of past service and the wages, for the period during which, he was under suspension. The review filed by the petitioner was rejected. Therefore, he availed the remedy under Section 2-A(2) of the Act.

It is true that, by the time the petitioner presented the dispute before the Labour Court, the order of removal passed against him, ceased to exist. However, the relief granted to him by the appellate authority was very limited, in its purport. A perusal of Section 2-A of the Act discloses that the facility extended thereunder is not limited to the instances of discharge, dismissal, retrenchment, or termination alone. The provision proceeds further, to take in its fold, "any dispute or difference", which is "connected with, or arising out of" such discharge, dismissal, retrenchment or termination. The denial of the benefit of past service and wages for the period of suspension are not only connected with, but also arise out of, the order of removal passed against the petitioner, and thereby, it constitutes a "dispute or difference", referred to, in this provision. It is a different thing, as to whether the petitioner can be granted such relief; and that would depend upon the appreciation of the facts,

relating to the case.

In ***Joseph N.K. Pradhan v. Industrial Tribunal*** *(1 supra)*, a Division Bench of the Orissa High Court dealt with the same issue, may be in a different context. In that case, the services of an employee were terminated on the ground of incapacity and old age. The termination, as such was not challenged. There existed a dispute as to the entitlement of the employee to be paid the gratuity. Therefore, the employee approached the Government and sought for reference. On a reference being made by the State Government, the Industrial Tribunal took up the matter. The employer raised an objection, as to the maintainability. It was urged that unless the very validity of termination of services is in challenge, Section 2-A cannot be invoked, for the ancillary purpose of determining the entitlement, to receive the gratuity. The Tribunal overruled the objection and proceeded to adjudicate the dispute, on merits. The Division Bench took the view that the expression "arising out of" occurring in Section 2-A, of the Act, would take into its fold, incidental matters, such as entitlement to receive gratuity, and it is not necessary that the termination, as such must be in dispute.

A similar objection raised before this Court in **A.P.S.R.T.C. v Basheer Ahmed** (*W.P.No.21354 of 1999*), was overruled through its order dated 02-02-2005. In ***Depot Manger, A.P.S.R.T.C., Mahaboobnagar, v. Presiding Officer, Labour Court-III, Hyderabad*** (*W.P.No.14708 of 1995*), identical situation was dealt with. On behalf of the Corporation, reliance was placed upon the judgment of the Supreme Court in ***State of Punjab v. Krishan Niwas,*** and a judgment rendered by a Division Bench of this Court in ***K. Dayanand v. APSRTC***. This Court did not accept the plea of the Corporation in that case. In the instant case also, reliance is placed upon those two judgments.

Krishan Niwas' case *(2 supra)*, did not arise under the Industrial Disputes Act, nor was the adjudication before a Labour Court. An employee of the State of Punjab was removed from service, on the basis of his conviction under Section 302 I.P.C. The employee approached the Government, when the conviction was set aside in appeal, and the sentence was modified to be the one under Section 325 by the appellate Court. The order of removal was replaced by the one, of reduction to a lower scale of pay. He was denied the back- wages. After joining the service, the

employee filed the suit for the recovery of back-wages. The Civil Court dismissed the suit, but the lower appellate Court decreed it. It was affirmed in the second appeal.

The Supreme Court set aside the decree, on the sole ground that the employee, joined the service on the basis of an order; reducing the punishment from removal to that of reduction in rank and thereby, he was precluded from challenging the same, subsequently. From the judgment, it does not appear that the question, as to whether the plea of *estoppel*, *acquiescence*, or *waiver,* applies in such cases, was either canvassed, or adjudicated. The general principle, that a party to a litigation, can accept, what a forum had granted to him, and canvass further remedies, in relation to what was denied to him; does not appear to have been urged. At any rate, that judgment cannot be treated as a precedent, as regards the scope of Section 2-A of the Act.

In ***K. Dayanand v. A.P.S.R.T.C***., *(3 supra)*, a Conductor of the Corporation was removed from service, after conducting departmental enquiry. The appellate authority modified that order, directing that the employee be appointed as Conductor, afresh. The employee approached the trade-union, which in turn, raised an industrial dispute. The Government made a reference to the Labour Court, under Section 10(1) (c), framing the following question:

> "Whether the demand of APSRTC National Mazdoor Union, Khammam— Register No.3108 for granting continuity of service to Sri K. Dayanand, conductor from 9-1-1981 to
> 17-7-1981 is justified? If so, to what relief the workman is entitled?"

The Labour Court took the view that denial of continuity of service to the employee was not justified. The Corporation filed the writ petition. A learned single Judge of this Court took the view that the Labour Court lacked the power, to entertain the reference. The reason assigned for this conclusion was, that the Labour Court could have granted the relief, only by invoking its power under Section 11-A of the Act, and for exercise thereof, existence of an order of discharge or dismissal, was *sine qua non*. The Division Bench concurred with the same and proceeded to add that, even on merits, the employee was not entitled for any relief. The relevant portion reads as under:

> "We find ourselves in agreement with the learned single Judge on that point also. Since we are holding that the Labour Court did not have the jurisdiction

> to entertain the reference, and on the merits also the order of the first appellate authority did not warrant any interference at the hands of the Labour Court, we dismiss the writ appeal and confirm the judgment of the learned single Judge."

The instant case is distinguishable on facts. The petitioner herein raised the industrial dispute, directly under Section 2-A(2); whereas in ***K. Dayanand's*** case *(3 supra)*, the cause was espoused by the Union and the matter was referred by the Government, to the Labour Court, under Section 10 of the Act. Further, the content of dispute, in the instant case, is the legality of the entire order of removal, notwithstanding the limited relief granted by the appellate authority. The claim in ***Dayanand's*** case *(3 supra)*, was confined to the continuity of service.

One question, which however, needs to be taken note of, is that the power of Government, to make a reference under Section 10, is wide enough, and the reference can be, on any issue, as long as it is, in relation to a matter, provided for under Schedule-II of the Act, and incidental thereto. Axiomatically, as long as a reference is within the scope of the matters, mentioned in Schedule-II, the Labour Court is bound to answer them, in one form or the other. In such case, the Labour Court would certainly have the jurisdiction to answer the reference. The award of a Labour Court can certainly be set aside, if it deviated from the parameters, which are prescribed for adjudication of such disputes. The observations made by the Division Bench in ***Dayanand's*** case *(3 supra),* as to the lack of jurisdiction of the Tribunal, in such matters have to be understood, in the context of the very text and nature of reference made to it.

It is not out of place here, to mention that, just as Section 2-A, as well as Section 11-A take in their fold, an "industrial dispute, relating to discharge or dismissal" of a workman, apart from the validity of the very discharge or dismissal. If the interpretation, as the one adopted by the Labour Court, in the instant case, is to be accepted, the very purpose of inclusion of Section 2-A, or 11-A, would be defeated. The Legislature was very much conscious of the fact that, if dismissal or discharge, pure and simple, can alone constitute the subject-matter of adjudication, modification of such punishments, in the departmental appeal, but replacing them with substantially harsh punishment; would leave the workman, without any remedy. It is for this reason, that the phrases, such as "connected with", "arising out of", or "in relation to" have been used in the respective provisions.

Further, it is settled course of adjudicatory process, that where a hierarchy of Courts and Authorities is provided, a party can avail the limited relief, granted to him, at one stage, and pursue the remedy, as regards that part of the relief, which was denied to him. Refusal to entertain such applications or petitions, on the ground that the cause of action, as it existed at the stage of initiation of proceedings, no longer subsists, would subvert the very purpose of providing for such an adjudicatory system. Unless the relevant statute specifically bars such remedies, the principles of *estoppel*, *acquiescence*, or *waiver*, cannot be invoked, in such cases. Acceptance of the limited relief granted to a litigant, at one stage of the proceedings, shall always be without prejudice to his right, to seek further redressal.

For the foregoing reasons, the writ petition is allowed, and the award passed by the Labour Court in I.D.No.149 of 2002 is set aside. The matter is remanded to the Labour Court, for fresh adjudication, on merits. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.24-01-2006.

Note:

L.R. copy to be marked.

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